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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 9, 2003

APPLICATION OF

TENASKA VIRGINIA II PARTNERS, L.P.

CASE NO. PUE-2001-00429

For approval of a certificate of public convenience and necessity pursuant to Va. Code Section 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work

FINAL ORDER

On August 15, 2001, Tenaska Virginia II Partners, L.P. ("Tenaska II" or the "Company") filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity pursuant to § 56-265.2 of the Code of Virginia (the "Code") to construct and operate a 900 MW natural gas-fired, combined cycle generating facility in Buckingham County, Virginia (the "Facility"). Tenaska II requested an exemption from the provisions of Chapter 10 of the Code, §§ 56-232 et seq. The Company also requested interim authority under § 56-234.3 of the Code to allow it to make financial expenditures and undertake preliminary construction work.

On September 13, 2001, the Commission entered an order scheduling a public hearing in this matter. The Commission required Tenaska II to provide public notice of its application, provided interested persons with an opportunity to participate in the matter, established a procedural schedule, and assigned a Hearing Examiner to conduct further proceedings.

On October 3, 2001, Columbia Gas of Virginia, Inc. ("Columbia Gas"), filed a notice of participation as a respondent.

Interested parties, including local businesses and federal, state, and local officials, filed comments in support of the Facility by the November 1, 2001, deadline.

The Department of Environmental Quality ("DEQ") coordinated an environmental review of the application by DEQ and other interested state agencies, the regional planning commission, and Buckingham County, Virginia. DEQ prepared a report on the potential impacts from construction and operation of the Facility, as well as recommendations for minimizing those impacts, which was filed on November 19, 2001 ("DEQ Report").

On November 26, 2001, the Commission Staff ("Staff") filed direct testimony regarding its analysis of Tenaska II's application. The DEQ Report was attached to this testimony.

Tenaska II filed rebuttal testimony on December 3, 2001.

The Company, Staff, and Columbia Gas entered into a stipulation regarding the supply of natural gas to the Facility ("Stipulation"). The Stipulation was filed on December 6, 2001.

An evidentiary hearing was held on December 10, 2001, before Hearing Examiner Howard P. Anderson, Jr. Richard D. Gary, Esquire, John M. Holloway, III, Esquire, and Angie Jenkins, Esquire, appeared on behalf of Tenaska II. Tenaska II presented the testimony of T. R. Ownby, Project Manager for Tenaska II, and Dr. Greg Kunkel, Manager of Environmental Affairs for Tenaska, Inc. Katharine A. Hart, Esquire, and C. Meade Browder, Jr., Esquire, appeared on behalf of Staff. Staff presented the testimony of Mark K. Carsley and Lawrence T. Oliver of the Division of Economics and Finance, and Marc A. Tufaro, of the Division of Energy Regulation. M. Renae Carter, Esquire, appeared on behalf of Columbia Gas. Three public witnesses testified at the hearing in support of the Facility. At the conclusion of the hearing, the Hearing Examiner

directed the Company and Staff to file post-hearing briefs on the issue of water discharge. These briefs were filed on January 31, 2002.

On March 26, 2002, the Hearing Examiner issued a ruling reopening this proceeding to receive additional evidence regarding the environment.¹ The Hearing Examiner requested additional evidence regarding three issues: (1) the cumulative impact of existing and proposed electric generating facilities on air quality in Buckingham County and surrounding counties; (2) the environmental impact of the lateral natural gas pipeline that will connect the Facility with the interstate gas pipeline of Transcontinental Gas Pipeline Corporation; and (3) the effects on transmission reliability of interconnecting the Facility to Dominion Virginia Power's transmission grid.

On April 25, 2002, Tenaska II filed supplemental testimony and exhibits on the issues identified by the Hearing Examiner. Staff filed its additional testimony and exhibits on May 9, 2002. Columbia Gas indicated in a letter filed on May 21, 2002, that it would not be participating in the receipt of additional evidence, but that Columbia Gas continued to support the adoption of the Stipulation.

A hearing was held on May 28, 2002, with Richard D. Gary, Esquire, John M. Holloway, III, Esquire, and Kevin Finto, Esquire, appearing on behalf of Tenaska II and Katharine A. Hart, Esquire, appearing on behalf of Staff. Tenaska II presented the testimony of Scott Helyer, Director of Transmission for Tenaska, Inc., and Dr. Kunkel. Staff did not present any witnesses.

¹ In Application of Tenaska Virginia Partners, LP, For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work, Case No. PUE-2001-00039, Order (January 16, 2002) ("Tenaska"), a majority of the Commission remanded that case for further proceedings and recommendations with respect to consideration of the environment, specifically the cumulative impact of proposed facilities on existing air quality .

On July 12, 2002, Tenaska II submitted a brief addressing the evidence presented at the May 28, 2002, hearing.

On September 10, 2002, the Hearing Examiner entered a Report summarizing the record and analyzing the evidence and issues in this proceeding. The Report makes the following findings:

- (1) The [Facility] will have no material adverse effect upon the rates paid by customers of any regulated utility in the Commonwealth;
- (2) The [Facility] will have no adverse effect upon the reliability of electric service provided by any regulated public utility;
- (3) The current level of air quality in Buckingham County is good, and is in attainment of all National Ambient Air Quality Standards;
- (4) The cumulative impact air analysis is reasonable;
- (5) The cumulative impact air analysis adequately demonstrates that the emissions, when combined with the emissions from other existing or proposed facilities, will have no material adverse effect on air quality in Buckingham County and the surrounding area;
- (6) The [Facility] will not adversely impact any private residences;
- (7) The [Facility] is not contrary to the public interest;
- (8) The [Facility] should enhance competition at the wholesale level;
- (9) Tenaska II should be directed to file with the Commission any tolling agreements pertaining to the [Facility];
- (10) The evidence supports a finding that the [Facility] will provide a positive economic benefit to Buckingham County and the Commonwealth;

(11) The Commission should grant Tenaska II a certificate of public convenience and necessity to construct and operate the [Facility] conditioned upon receipt of all permits required to construct and operate the [Facility];

(12) The certificate of public convenience and necessity issued to Tenaska II should contain a provision that it will expire two years from the date issued, if construction on the [Facility] has not commenced;

(13) Tenaska II should be directed to report to the Commission any changes in its business plan; and

(14) The Stipulation between Staff, Tenaska II, and Columbia Gas should be approved.

Therefore, the Hearing Examiner recommended that the Commission adopt the findings contained in his Report and grant Tenaska II a certificate of public convenience and necessity pursuant to § 56-580 D of the Code to construct and operate the Facility.²

In response to a Staff request, on November 21, 2002, DEQ filed a letter pursuant to § 10.1-1186.2:1 of the Code ("DEQ Letter"). Among other things, this Code section requires that, prior to the close of the Commission's record on an application for certification of an electric generating facility pursuant to § 56-580 of the Code, the DEQ shall provide the Commission with certain information about environmental issues identified during the review process. The DEQ Letter indicated, among other things, that all environmental issues identified during the DEQ's review process were addressed in the DEQ Report previously filed.

² On September 19, 2002, Tenaska II filed a letter making a factual correction to the Hearing Examiner's Report that does not affect the Hearing Examiner's recommendations. The Company otherwise did not object to the Hearing Examiner's Report.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, and the applicable law, is of the opinion and finds that a certificate of public convenience and necessity to construct and operate the Facility should be granted to Tenaska II.

As we have indicated in previous orders,³ the Code establishes six general areas of analysis applicable to electric generating plant applications: (1) reliability;⁴ (2) competition;⁵ (3) rates;⁶ (4) environment;⁷ (5) economic development;⁸ and (6) public interest.⁹ We have evaluated the Facility according to these six areas.

We find that the Facility will have no material adverse effect upon reliability of electric service provided by any regulated public utility. We further find that the Facility is not otherwise contrary to the public interest in that, among other things, rates for the regulated public utility will not be impacted. In addition, we find that the Facility will provide economic benefit.

Pursuant to §§ 56-46.1 A and 56-580 D of the Code, we have given consideration to the effect of the Facility on the environment. On April 30, 2002, Tenaska II received from the DEQ a Prevention of Significant Deterioration Permit, Registration No. 32004, authorizing the

³ See, e.g., Tenaska, Case No. PUE-2001-00039, Final Order (April 19, 2002); Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County, Case No. PUE-2001-00303, Final Order (July 17, 2002).

⁴ Va. Code Ann. §§ 56-46.1 A and 56-580 D (i).

⁵ Va. Code Ann. § 56-596 A.

⁶ Va. Code Ann. §§ 56-580 D (ii). See also 20 VAC 5-302-20 14; Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice at 6 (Dec. 14, 2001).

⁷ Va. Code Ann. §§ 56-46.1 A and 56-580 D.

⁸ Va. Code Ann. §§ 56-46.1 and 56-596 A.

⁹ Va. Code Ann. §§ 56-580 D (ii).

Company to construct and operate an electrical power generation facility. On September 5, 2002, Tenaska II filed with the Commission a copy of Virginia Water Protection Permit No. 01-1282 ("VWPP") issued to East Cost Transport, Inc., authorizing it to construct water intake facilities and withdraw water from the James River to serve the Facility.

The DEQ Letter explains that four of the recommendations contained in the DEQ Report were included as a part of the above-mentioned VWPP. These four recommendations involve: (1) precautions for in-stream work; (2) correlating flow conditions with downstream water withdrawals; (3) addressing cumulative impacts of the Tenaska II Facility and the Tenaska Virginia Partners, LP, project in Fluvanna County; and (4) wetland protection practices. We note that effective July 1, 2002, §§ 56-46.1 A and 56-580 D of the Code provide, among other things, that any valid permit or approval regulating environmental impact and mitigation of adverse environmental impact, "whether such permit or approval is granted prior to or after the Commission's decision," shall be deemed to satisfy the requirements of §§ 56-46.1 A and 56-580 D of the Code "with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters." Therefore, pursuant to §§ 56-46.1 A and 56-580 D of the Code, the Commission shall impose no additional conditions with respect to these four recommendations.

The DEQ Letter identifies four other recommendations contained in the DEQ Report that "could have been included as conditions of" the VWPP, but were not. The record reflects that Tenaska II has agreed to comply with three of these four recommendations, which pertain to: (1) a monitoring program in Fluvanna; (2) wildlife and waterfowl habitat areas; and (3) spill

prevention measures.¹⁰ We will require the Company to comply with these three recommendations. The fourth recommendation involves consideration of alternative wastewater discharge, such as routing the effluent into a water storage reservoir rather than directly into the James River, to address concerns regarding the thermal effects of the effluent. The DEQ Letter states that this recommendation was not included in the VWPP, which pertains to water withdrawal, because the DEQ Water Permits Support Office believed that it lacked the requisite authority.

The record is clear, however, that this fourth recommendation will be addressed as part of the process for receiving a Virginia Pollutant Discharge Elimination System Permit (“VPDES”) from the DEQ. Witnesses for both the Department of Conservation and the DEQ testified that thermal effects on the James River and alternative wastewater discharge would be addressed by the VPDES permitting process.¹¹ Thus, the recommendation on wastewater discharge is within the authority of, and is being considered by, the permitting agency. Pursuant to §§ 56-46.1 A and 56-580 D of the Code, the Commission shall impose no additional condition with respect to this recommendation.

Finally, the DEQ Letter of November 21, 2002, notes that three recommendations contained in the DEQ Report of November 19, 2001, pertain to matters not governed by permits or approvals. These recommendations involve: (1) protection of individual trees; (2) pollution prevention practices; and (3) limiting the use of pesticides and herbicides. Tenaska II agreed to implement these recommendations. We will require Tenaska II to comply with these recommendations as a condition of the certificate.

¹⁰ Ex. GK-8 at 10-11.

¹¹ See Tr. at 48, 64-68, and 73.

In addition, the Commission will condition the certificate granted herein upon the Company's receipt of all environmental and other permits necessary to construct and operate the Facility. We also will provide that the certificate will expire two years from the date of this Order if construction on the Facility has not commenced.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-580 D of the Code, Tenaska II is hereby granted authority and a certificate of public convenience and necessity to construct and operate the Facility described in this proceeding.

(2) The certificate granted herein shall be conditioned upon the receipt of all environmental and other permits necessary to construct and operate the Facility.

(3) As a condition of the certificate, Tenaska II shall comply with the recommendations made by DEQ in the DEQ Report filed in this proceeding, except for the five recommendations identified herein on which the Commission shall impose no additional conditions: (a) precautions for in-stream work; (b) correlating flow conditions with downstream water withdrawals; (c) addressing cumulative impacts of the Tenaska II Facility and the Tenaska Virginia Partners, LP, project in Fluvanna County; (d) wetland protection practices; and (e) alternative wastewater discharge.

(4) The certificate granted herein shall expire in two years from the date of this Order, if construction of the Facility has not commenced.

(5) The Stipulation between Staff, Tenaska II, and Columbia Gas is hereby approved and adopted.

(6) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.

MOORE, Commissioner, Concurs:

Given the statutory change effective July 1, 2002, I concur with my colleagues in the decision to approve construction and operation of the proposed facility. While the necessary permits from all other agencies have not been issued, as reflected in the order, there appears to be nothing further for this Commission to consider. I continue to be extremely concerned that the environmental studies, analyses, and reviews prior to the issuance of permits and approvals may not be adequate or as thorough as they should be.¹ If the studies, analyses, and reviews of the

¹ Examples of areas where, based on the records before the Commission, additional analysis and study should be required are discussed in my prior concurrences and dissents. See Commissioner Moore concurrence, *Application of Old Dominion Electric Cooperative, For approval of a certificate of public convenience and necessity for electric generating facilities*, Case No. PUE-2002-00003, Final Order (November 6, 2002); Commissioner Moore concurrence, *Application of CPV Cunningham Creek LLC, For approval of a certificate of public convenience and necessity pursuant to Va. Code §56-265.2, for an exemption from Chapter 10 of Title 56, and for the interim authority to make financial expenditures*, Case No. PUE-2001-00477, Final Order (October 7, 2002); Commissioner Moore concurrence, *Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County*, Case No. PUE-2001-00303, Final Order (July 17, 2002); Commissioner Moore dissent, *Application of Buchanan Generation, LCC, For permission to construct and operate an electrical generating facility*, Case No. PUE-2001-00657, Final Order (June 25, 2002) (“*Buchanan, Moore dissent*”); Commissioner Moore dissent, *Application of Tenaska Virginia Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Virginia Code §56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Final Order (April 19, 2002) (“*Tenaska, Moore dissent*”).

This case presents another example based on the data and explanations provided to the Commission. The most critical area in this proceeding appears to be ozone where the current background ozone concentration level in the

state are inadequate, Virginia may suffer unnecessarily, causing harm not only to the environment, but to the health of the citizens and the economy of the Commonwealth.

area of the proposed plant is already at 117 ppb, which is almost equal to the present NAAQS for ozone. The cumulative impact study puts the ozone concentration level at 121 ppb, above the current NAAQS of 120, but below the violation threshold. Ozone concentration levels under the more stringent revised standard were not provided although it was said that the area would be in attainment under both standards. Although not stated, it certainly appears that those involved in the permitting process act as though if there is no violation, then Virginia's environment and people are safe. This is incorrect. There is no safe level of ozone, and exceedences under the revised standard (eight-hour, 80 ppb) have been more than fifteen times greater statewide than under the one-hour standard (one-hour, 120 ppb). *See Tenaska*, Moore dissent at 6-8 and *Buchanan*, Moore dissent at 3-4. Given these facts and the current ozone level in the area, more data should be provided and analyzed, and the impacts of ozone on the health of people and the environment should be studied and considered carefully before the Commonwealth decides whether to approve the construction and operation of the proposed facility.